Office Supreme Court U.S.
FILED
MAR 16 1901
JAMES H. McKENNEY,
Clerk.

No. 210.

Brief for Defendants in Error

By. of White, Monroe & Withington for D. E.

SUPREME COURT OF THE UNITED STATES

October Term, 1900

NO. 210

Filed Mar. 16, 1901.

JESUS QUEVAS, SOMETIMES CALLED JESUS CUEVO, ET ALI., PLAINTIFFS IN ERROR.

vs.

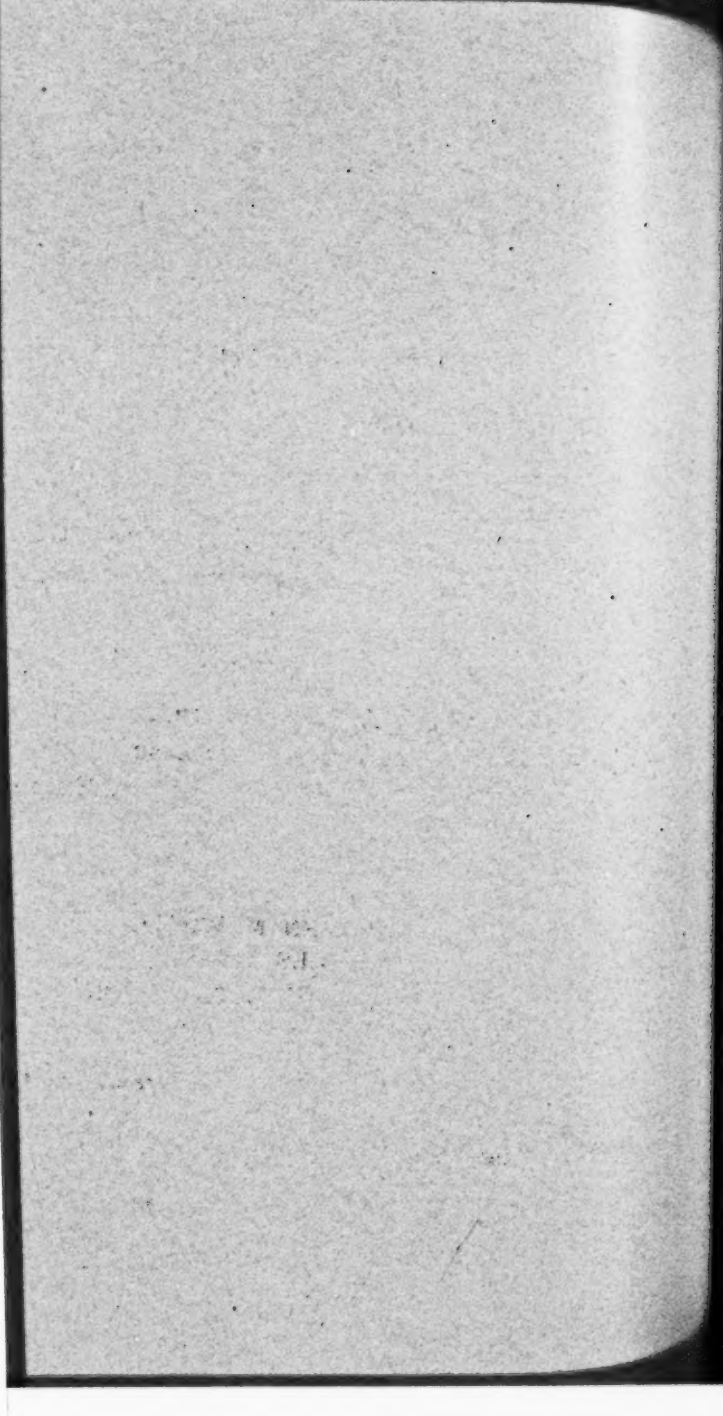
J. DOWNEY HARVEY, ADMINISTRATOR OF THE ESTATE OF JOHN G. DOWNEY, DECEASED, DEFENDANT IN ERROR.

STEPHEN M. WHITE,
CHARLES MONROE,
DAVID L. WITHINGTON,
CASSIUS CARTER,

Attorneys for Defendant in Error.

FILED, MARCH,..... 1901

(17651)



IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1900.

No. 210.

JESUS QUEVAS, et ali.,
Plaintiffs in Error,
vs.
J. DOWNEY HARVEY, Adm.,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

The defendant in error joins with the plaintiffs in error in submitting this case on the briefs and argument in case of Barker vs. Henry, No. 209. In this brief, we will, for the convenience of the court, as we suggested in that brief, point out the

distinctions which exist between that case and the case at bar.

The two grants comprise the entire San Jose valley and together form what is known as Warner's Ranch, the northern portion being involved in the Barker case, and the southern, or Portilla grant, being involved in the case at bar. The Portilla grant was made earlier than the grant to Warner, namely, in 1836. The grant is indefinite in its description and is located in the petition of Portilla shown in the expediente as "situated at the entrance to the east road to the Colorado River," and in the grant as "cuatro sitios de genado mayor in the valle de San Jose." It was thus a floating grant for a definite amount within the general confines of the Valley de San Jose.

The Indians in this case are not of the Coahuilla tribe, they are probably Shoshone, and are what are locally known as Dieguenos.

There was no finding of the perfect in the expediente nor is there any report from either of the missions, but the petition was referred to Arguello, military commander of San Diego, who reported that it is on the highway on which travel the people from Senora, and that although the Mission San Diego formerly had stock thereon, on account of the distance "and from the danger on the part of the wild Indians who

are very numerous there they had to take them away." The grant was thereupon made with the usual clause that the grantee may enjoy it freely and exclusively. There is no pretence in the evidence that the mission of San Luis Rey had any claim to the portion of the valley included within the patent.

We submit that the judgment of the Supreme Court of California should be affirmed on the grounds set forth in the brief in the Barker case and that this court has no jurisdiction of the cause and that the case should be dismissed on that ground.

It is true that there is no report from the Mission in this case and no finding by the perfect that the premises were vacant and unoccupied at the time of making the grant, but the military commander of San Diego, Arguello's finding and report in effect shows that the land was vacant and that if any Indians were there they were wild Indians and not Mission Indians, and as the decision in the Supreme Court of California simply shows that the judgment was affirmed on the grounds set forth in Harvey vs. Barker, which case was decided amongst other grounds, upon this, that whatever rights the Indians may have had, if any, the finding of the perfect was conclusive against them, and this ground being sufficient to sustain the decision

and not subject to review by this court, the writ should be dismissed.

Respectfully submitted,

CHARLES MONROE,
DAVID L. WITHINGTON,
CASSIUS CARTER,

Attorneys for Defendant in Error.